

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FIDELITY AND GUARANTY  
INSURANCE COMPANY,  
Plaintiff,

V.

STAR EQUIPMENT CORPORATION,  
CHARLENE B. FORAN, JOHN J.  
FORAN and TOWN OF SEEKONK,  
Defendants.

Civil Action No.: 04-10250-EFH

DEFENDANT TOWN OF SEEKONK'S ANSWER TO DEFENDANT, STAR  
EQUIPMENT CORPORATION, CHARLENE B. FORAN AND JOHN J.  
FORAN'S CROSS-CLAIMS

1. Defendant Town of Seekonk ("hereinafter Seekonk") admits the allegations contained in paragraph 1 of cross claimant, Star Equipment Corporation, Charlene B. Foran and John J. Foran's ("hereinafter cross-claimants") cross-claim.
2. Defendant, Seekonk admits the allegations contained in paragraph 2 of cross-claimants' cross-claim.
3. Defendant, Seekonk admits the allegations contained in paragraph 3 of cross-claimants' cross-claim.
4. Defendant, Seekonk denies the allegations contained in paragraph 4 of cross-claimants' cross-claim.
5. Defendant, Seekonk denies the allegations contained in paragraph 5 of cross-claimants' cross-claim.
6. Defendant, Seekonk denies the allegations contained in paragraph 6 of cross-claimants' cross-claim.
7. Defendant, Seekonk admits the allegations contained in paragraph 7 of cross-claimants' cross-claim.
8. Defendant, Seekonk denies the allegations contained in paragraph 8 of cross-claimants' cross-claim.
9. Defendant, Seekonk denies the allegations contained in paragraph 9 of cross-claimants' cross-claim.
10. Defendant, Seekonk admits the allegations contained in paragraph 10 of cross-claimants' cross-claim.

11. Defendant, Seekonk admits the allegations contained in paragraph 11 of cross-claimants' cross-claim.
12. Defendant, Seekonk admits the allegations contained in paragraph 12 of cross-claimants' cross-claim.
13. Defendant, Seekonk admits the allegations contained in paragraph 13 of cross-claimants' cross-claim.
14. Defendant, Seekonk denies the allegations contained in paragraph 14 of cross-claimants' cross-claim.
15. Defendant, Seekonk denies the allegations contained in paragraph 15 of cross-claimants' cross-claim.
16. Defendant, Seekonk denies the allegations contained in paragraph 16 of cross-claimants' cross-claim.
17. Defendant, Seekonk denies the allegations contained in paragraph 17 of cross-claimants' cross-claim.
18. Defendant, Seekonk denies the allegations contained in paragraph 18 of cross-claimants' cross-claim.
19. Defendant, Seekonk denies the allegations contained in paragraph 19 of cross-claimants' cross-claim.
20. Defendant, Seekonk denies the allegations contained in paragraph 20 of cross-claimants' cross-claim.
21. Defendant, Seekonk denies the allegations contained in paragraph 21 of cross-claimants' cross-claim.
22. Defendant, Seekonk admits the allegations contained in paragraph 22 of cross-claimants' cross-claim.
23. Defendant, Seekonk denies the allegations contained in paragraph 23 of cross-claimants' cross-claim.
24. Defendant, Seekonk denies the allegations contained in paragraph 24 of cross-claimants' cross-claim.
25. Defendant, Seekonk denies the allegations contained in paragraph 25 of cross-claimants' cross-claim.
26. Defendant, Seekonk denies the allegations contained in paragraph 26 of cross-claimants' cross-claim.

- 27. Defendant, Seekonk denies the allegations contained in paragraph 27 of cross-claimants' cross-claim.
- 28. Defendant, Seekonk denies the allegations contained in paragraph 28 of cross-claimants' cross-claim.
- 29. Defendant, Seekonk denies the allegations contained in paragraph 29 of cross-claimants' cross-claim.
- 30. Defendant, Seekonk denies the allegations contained in paragraph 30 of cross-claimants' cross-claim.
- 31. Defendant, Seekonk denies the allegations contained in paragraph 31 of cross-claimants' cross-claim.

COUNT I  
(Breach of Contract)

- 32. Defendant, Seekonk repeats its responses to paragraphs 1 – 31 of this answer as if fully set forth herein.
- 33. Defendant, Seekonk denies the allegations contained in paragraph 33 of cross-claimants' cross-claim.
- 34. Defendant, Seekonk denies the allegations contained in paragraph 34 of cross-claimants' cross-claim.
- 35. Defendant, Seekonk denies the allegations contained in paragraph 35 of cross-claimants' cross-claim.
- 36. Defendant, Seekonk denies the allegations contained in paragraph 36 of cross-claimants' cross-claim.
- 37. Defendant, Seekonk denies the allegations contained in paragraph 37 of cross-claimants' cross-claim.
- 38. Wherefore, the defendant, Seekonk respectfully requests that this Court dismiss cross claimants' cross claim and award the defendant's costs and attorney's fees incurred in the defense of this matter.

COUNT II  
(Breach of Contract)

- 39. Defendant, Seekonk repeats its responses to paragraphs 1 – 38 of this answer as if fully set forth herein.
- 40. Defendant, Seekonk denies the allegations contained in paragraph 40 of cross-claimants' cross-claim.

41. Defendant, Seekonk denies the allegations contained in paragraph 41 of cross-claimants' cross-claim.
42. Defendant, Seekonk denies the allegations contained in paragraph 42 of cross-claimants' cross-claim.
43. Defendant, Seekonk denies the allegations contained in paragraph 43 of cross-claimants' cross-claim.
44. Defendant, Seekonk denies the allegations contained in paragraph 44 of cross-claimants' cross-claim.
45. Wherefore, the defendant, Seekonk respectfully requests that this Court dismiss cross claimants' cross claim and award the defendant's costs and attorney's fees incurred in the defense of this matter.

COUNT III  
(Intentional Misrepresentation)

46. Defendant, Seekonk repeats its responses to paragraphs 1 – 45 of this answer as if fully set forth herein.
47. Defendant, Seekonk denies the allegations contained in paragraph 47 of cross-claimants' cross-claim.
48. Defendant, Seekonk denies the allegations contained in paragraph 48 of cross-claimants' cross-claim.
49. Defendant, Seekonk denies the allegations contained in paragraph 49 of cross-claimants' cross-claim.
50. Defendant, Seekonk denies the allegations contained in paragraph 50 of cross-claimants' cross-claim.
51. Defendant, Seekonk denies the allegations contained in paragraph 51 of cross-claimants' cross-claim.
52. Wherefore, the defendant, Seekonk respectfully requests that this Court dismiss cross claimants' cross claim and award the defendant's costs and attorney's fees incurred in the defense of this matter.

COUNT IV  
(Negligent Misrepresentation)

53. Defendant, Seekonk repeats its responses to paragraphs 1 – 53 of this answer as if fully set forth herein.
54. Defendant, Seekonk denies the allegations contained in paragraph 54 of cross-claimants' cross-claim.

- 55. Defendant, Seekonk denies the allegations contained in paragraph 55 of cross-claimants' cross-claim.
- 56. Defendant, Seekonk denies the allegations contained in paragraph 56 of cross-claimants' cross-claim.
- 57. Wherefore, the defendant, Seekonk respectfully requests that this Court dismiss cross claimants' cross claim and award the defendant's costs and attorney's fees incurred in the defense of this matter.

COUNT V  
(Interference With Business Relations)

- 58. Defendant, Seekonk repeats its responses to paragraphs 1 – 57 of this answer as if fully set forth herein.
- 59. This paragraph calls for legal conclusions which the defendant, Seekonk is not qualified to make, therefore, no answer is required. If a response is required, the defendant, Seekonk denies the allegations contained in paragraph 59 of the cross-claimants' cross-claim.
- 60. This paragraph calls for legal conclusions which the defendant, Seekonk is not qualified to make, therefore, no answer is required. If a response is required, the defendant, Seekonk denies the allegations contained in paragraph 60 of the cross-claimants' cross-claim.
- 61. Defendant, Seekonk denies the allegations contained in paragraph 61 of cross-claimants' cross-claim.
- 62. Defendant, Seekonk denies the allegations contained in paragraph 62 of cross-claimants' cross-claim.
- 63. Defendant, Seekonk denies the allegations contained in paragraph 63 of cross-claimants' cross-claim.
- 64. Wherefore, the defendant, Seekonk respectfully requests that this Court dismiss cross claimants' cross claim and award the defendant's costs and attorney's fees incurred in the defense of this matter.

COUNT VI  
(Defamation)

- 65. Defendant, Seekonk repeats its responses to paragraphs 1 – 64 of this answer as if fully set forth herein.
- 66. Defendant, Seekonk denies the allegations contained in paragraph 66 of cross-claimants' cross-claim.

67. Defendant, Seekonk denies the allegations contained in paragraph 67 of cross-claimants' cross-claim.
68. Defendant, Seekonk denies the allegations contained in paragraph 68 of cross-claimants' cross-claim.
69. Defendant, Seekonk denies the allegations contained in paragraph 69 of cross-claimants' cross-claim.
70. Wherefore, the defendant, Seekonk respectfully requests that this Court dismiss cross claimants' cross claim and award the defendant's costs and attorney's fees incurred in the defense of this matter.

### AFFIRMATIVE DEFENSES

#### FIRST AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant hereby states that the cross-claimants' cross-claim fails to state a cause of action upon which relief can be granted.

#### SECOND AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that their actions are immune, as they were discretionary functions.

#### THIRD AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendants state that the defendant's actions are entitled to qualified and good faith immunity.

#### FOURTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the cross-claimants' failed to exhaust all avenues of appeal available to it.

#### FIFTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that the cross-claimants' cannot recover for the reason that the cross-claimants' failed to give proper notice of the damages allegedly suffered by the cross-claimants' to the defendant, as required by General Laws Chapter 258.

#### SIXTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the action is barred by applicable statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that service of process was deficient.

EIGHTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that process was deficient.

NINTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the action and conduct of the defendant, to the extent they occurred as alleged were undertaking in the good faith and performance of their official duties without malice and are therefore privileged under applicable law.

TENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that this action consists of a claim based upon the performance or failure to perform the discretionary function or duty on the part of a public employer or public employee, at use of his office or employment, and therefore, the cross-claimants' cannot recover in this action.

ELEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant, Town of Seekonk, is immune from liability pursuant to General Laws Ch. 258, §10.

JURY CLAIM

Town of Seekonk demands a trial by jury as to all counts and causes of action

Respectfully submitted,  
Town of Seekonk  
By his Attorneys,

/s/ Andrew S. Brooslin  
Leonard H. Kesten, BBO #542396  
Andrew S. Brooslin, BBO #638238  
Brody, Hardoon, Perkins & Kesten, LLP  
One Exeter Plaza  
Boston, MA 02116  
(617) 880-7100

Dated: June 18, 2004